

ORIGINAL

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

GERALD LYTHE

CV 08 5113

COMPLAINT

**TOWNES, J.**

NAME OF PLAINTIFF(S)

BORENSTEIN CATERERS

NAME OF DEFENDANT(S)

This action is brought for discrimination in employment pursuant to (check only those that apply):



Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. No. 102-166) (race, color, gender, religion, national origin).

**NOTE:** *In order to bring a suit in federal district court under Title VII, you must first obtain a right to sue letter from the Equal Employment Opportunity Commission.*



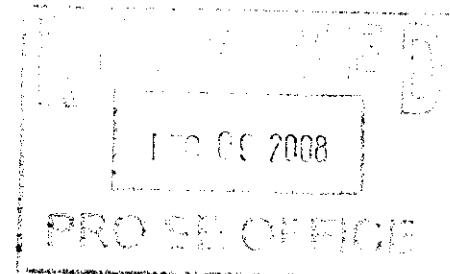
Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 - 634 (amended in 1984, 1990, and by the Age Discrimination in Employment Amendments of 1986, Pub. L. No. 92-592, the Civil Rights Act of 1991, Pub. L. No. 102-166).

**NOTE:** *In order to bring a suit in federal district court under the Age Discrimination in Employment Act, you must first file charges with the Equal Employment Opportunity Commission.*



Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 - 12117 (amended by the Civil Rights Act of 1991, Pub. L. No. 102-166).

**NOTE:** *In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a right to sue letter from the Equal Employment Opportunity Commission.*



**BLOOM, M.J.**

Jurisdiction is specifically conferred upon this United States District Court by the aformentioned statutes, as well as 28 U.S.C. §§ 1331, 1343. Jurisdiction may also be appropriate under 42 U.S.C. §§ 1981, 1983 and 1985(3), as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, and any related claims under New York law.

1. Plaintiff resides at:

131-23 225<sup>th</sup> St. LAURELTON  
Street Address

Queens, N.Y., 11413, (718) 276-0647  
County State Zip Code Telephone Number

2. Defendant(s) resides at, or its business is located at:

179-29 150<sup>th</sup> ROAD JAMAICA, NEW YORK  
Street Address

Queens, N.Y., NEW YORK, 11434  
County City State Zip Code

3. The address at which I sought employment or was employed by the defendant(s) is:

179-29 150<sup>th</sup> ROAD JAMAICA NEW YORK  
Street Address

Queens, N.Y., NEW YORK, 11434  
County City State Zip Code

4. The discriminatory conduct of which I complain in this action includes (check only those that apply).

Failure to hire.

Termination of my employment.

Failure to promote.

Failure to accommodate my disability.

Unequal terms and conditions of my employment.

Retaliation

Other acts (specify): \_\_\_\_\_.

*NOTE: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.*

5. It is my best recollection that the alleged discriminatory acts occurred on:

JUNE 13<sup>th</sup> 2007

Date(s)

6. I believe that the defendant(s) (check one)

is still committing these acts against me.

is not still committing these acts against me.

7. Defendant(s) discriminated against me based on my:

(check only those that apply and state the basis for discrimination, for example, what is your religion, if religious discrimination is alleged)

race \_\_\_\_\_  color \_\_\_\_\_

gender/sex \_\_\_\_\_  religion \_\_\_\_\_

national origin \_\_\_\_\_

age \_\_\_\_\_ My date of birth is: July 26 1956  
Date

disability \_\_\_\_\_

*NOTE: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.*

**Only litigants alleging age discrimination must answer Question #11.**

11. Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct (check one),

60 days or more have elapsed.

less than 60 days have elapsed.

12. The Equal Employment Opportunity Commission (check one):

has not issued a Right to Sue letter.

has issued a Right to Sue letter, which I  
received on \_\_\_\_\_.

Date

**NOTE:** Attach a copy of the Right to Sue Letter from the Equal Employment Opportunity Commission to this complaint.

WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, costs, and attorney's fees.

Gerald L. D  
PLAINTIFF'S SIGNATURE

Dated: DEC. 8 2008

131-23 225<sup>th</sup> St. LAURELTON

Address

QUEENS N.Y. 11413

(718) 276-0647

Phone Number

8. The facts of my case are as follows:

ON ABOUT JUNE 2 2007, I WAS CALLED  
INTO THE PRESIDENT OF COMPANYS OFFICE  
to be told THAT THEY HAD TO LAY ME OFF  
BECAUSE BUSINESS WAS SLOW AND MY  
POSITION AS PRODUCTION MANAGER / SOUS CHEF  
WAS NO LONGER NEEDED, YET THEY WAS  
TRAINING SOME ONE ABOUT 20 YRS YOUNGER  
FOR THE POSITION, but he didn't want  
THE POSITION OR RESPONSABILITY

(Attach additional sheets as necessary)

**Note:** As additional support for your claim, you may attach to this complaint a copy of the charge filed with the Equal Employment Opportunity Commission, the New York State Division of Human Rights, or the New York City Commission on Human Rights.

9. It is my best recollection that I filed a charge with the New York State Division of Human

Rights or the New York City Commission on Human Rights regarding defendant's

alleged discriminatory conduct on: DEC. 8 2008  
Date

10. It is my best recollection that I filed a charge with the Equal Employment Opportunity

Commission regarding defendant's alleged discriminatory conduct on: 11/19/07  
Date



**U.S. EQUAL OPPORTUNITY COMMISSION  
New York District Office**

33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY 10004-2112  
(212) 336-3620  
TTY (212) 336-3622  
General FAX (212) 336-3625

**BY US MAIL**

Mr. Gerald Lytle  
131-23 225<sup>th</sup> Street  
Laurelton, New York 11413

**Re: Gerald Lytle v. Borenstein Caterers  
EEOC Charge No.: 846-2008 - 21218**

Dear Mr. Lytle:

The EEOC has concluded its inquiry into your allegations of discrimination. The Commission's Priority Charge Handling Procedures call for us to focus our limited resources on those cases that are most likely to result in findings of violations of the laws we enforce. Our review of the evidence in your case, including the information you provided, fails to indicate that a violation has occurred and it is not likely that additional investigation will result in our finding a violation.

You alleged that you were terminated and replaced with a younger employee because of your race, age and disability.

Respondent denies your claims. It states that the loss of a significant customer instigated the need for a reduction in force. Respondent asserts that you were among seven others, five of which were under the age of 40 who were terminated. Respondent states that it did not hold any discriminatory animus against you. It insists that your last employment period came after previously terminating you for misconduct. After the reduction in force, Respondent states that you were not replaced by a younger employee. Another co-worker whom you previously worked with took on your duties. When business began to improve, Respondent offered you part-time employment, an offer that you refused. This position was not covered by health insurance. Respondent claims that in no way did it attempt to deny you health insurance because of your medical condition. In fact, Respondent was aware your condition and during your employment accommodated you during periods of absence because of it. Respondent indicates that it was for business reasons that you were terminated and your age, race and disability did not play a role in its decision.

Based on the information provided, the Commission is unable to support your claim of discrimination based on race, age and disability.

This determination concludes the processing of this charge. Even though you may disagree, this Determination / Dismissal is final. Enclosed is your Notice of Right to Sue, allowing you to file suit in Federal District Court against Respondent, if you so choose. This letter is your final notice of our findings and your sole notice of your right to sue.

You may file suit within 90 days of your receipt of this letter. Otherwise, your right to sue will be lost. The Commission cannot reinstate your right to sue if you or your representative fails to file suit in Federal District Court against Respondent within the 90-day, statutory limit.

Sincerely,



V. Guest  
Federal Investigator  
*On Behalf of Spencer H. Lewis, District Director NYDO*

SEP 12 2008

\_\_\_\_\_  
Date

## U.S. EQUAL OPPORTUNITY COMMISSION

## DISMISSAL AND NOTICE OF RIGHTS

To: **Gerald Lytle**  
131-23 225th St.  
Laurelton, NY 11413

From: **New York District Office**  
33 Whitehall Street  
5th Floor  
New York, NY 10004



*On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.

EEOC Representative

Telephone No.

**846-2008-21218****V. Guest, Investigator****(212) 336-3620****THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

**- NOTICE OF SUIT RIGHTS -***(See the additional information attached to this form.)*

**Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act:** This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

**Equal Pay Act (EPA):** EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit **may not be collectible**.

On behalf of the Commission

SEP 12 2008

Enclosures(s)

Spencer H. Lewis, Jr.  
Director

(Date Mailed)

cc: **BORENSTEIN CATERERS**

c/o Roger H. Briton, Esq.

Jackson Lewis, LLP

58 South Service Road, Suite 410

Melville, NY 11747



## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

November 19, 2007

Gerald Lytle  
131-23 225th St.  
Laurelton, New York 11413

Dear Mr. Gerald Lytle,

Thank you for contacting us on 11/19/2007 10:27 AM. Based on the information you provided, it appears your situation may be covered by the laws we enforce. To begin the charge-filing process, please read and complete the entire questionnaire immediately. You may return the questionnaire by mail to the EEOC office listed below or you may return the questionnaire in person. If you wish to return the completed questionnaire in person, we strongly encourage you to call the office at the number indicated below before visiting. The charge filing process can take up to two hours to complete and the intake office hours and procedures may differ from office to office.

New York District Office  
33 Whitehall Street  
New York, NY 10004  
1-866-408-8075 or 1-212-336-3630

Please remember to:

- Answer all questions as completely as possible.
- Include the location where you work(ed) or applied.
- Complete both sides of each page.
- Attach additional pages to complete your responses, if necessary.
- Contact the field office if you have questions about completing this form or if you wish to inquire about visiting the office to complete the charge filing process.

Information about the laws we enforce and our charge-filing procedures is available on our web site at [www.eeoc.gov](http://www.eeoc.gov).

A charge of job discrimination must be filed with the EEOC within 180 days from the date of harm in order to protect your rights. This 180 day filing deadline may be extended to 300 days if the charge is also covered by a state or local job discrimination law. Therefore, it is important that you submit the completed questionnaire promptly.

Submission of this questionnaire may not meet all requirements for filing a charge. However, this questionnaire will allow the EEOC to review your circumstances further and determine whether we can assist you.

Please call 1-800-669-4000 and provide the transaction number 071119-000829, if you have not heard from the field office after 30 days from the date you mailed the completed questionnaire.

Sincerely,  
U.S. Equal Employment Opportunity Commission

\* PLEASE do NOT return the questionnaire to the address on the envelope; return it to the address above \*

EEOC Form 5 (5/01)

EEOC Form 5 (5/01)

<b>CHARGE OF DISCRIMINATION</b>		Charge Presented To: <input type="checkbox"/> FEPA      Agency(ies) Charge No(s): <input checked="" type="checkbox"/> EEOC
<p>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</p> <p><b>New York State Division Of Human Rights</b> _____ and EEOC</p> <p><i>State or local Agency, if any</i></p>		
<p>THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):</p> <p><u>SEE ATTACHED!</u></p>		
<p>I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p> <p>I declare under penalty of perjury that the above is true and correct.</p> <p><u>2/11/08 Harold Lyd</u> Date</p> <p>Charging Party Signature</p>		<p>NOTARY – When necessary for State and Local Agency Requirements</p> <p>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</p> <p>SIGNATURE OF COMPLAINANT</p> <p><u>Neal Prager</u></p> <p>SUBSCRIBED AND SWORN TO BEFORE ME THIS <u>24</u> DAY OF <u>February</u> <u>2008</u> (month, day, year) Notary Public, State of New York No. 01PR6127936 Qualified in Nassau County Certificate Filed in Queens County Commission Expires May 30, 2012</p>

On June 2, 2007 I was called into the office by Kobi Li-Or and was told that they had to lay me off because business was slow. I was also told that my position was not needed. It was later brought to my attention that someone else was placed in that same position.

I also believe it's because I have cancer and going through chemo that they decided to terminate me. However I was told that if business picks up, that I would be rehired back, that turned out to be a lie because as it turned out they hired someone else to fill my position and that person is from Israel. This I feel is important because I worked at a Jewish owned company. I was told however that right after I was laid off that someone else was immediately moved into my old position, the problem however is that I was told that my position was no longer needed.

I believe that in order to get around firing me that they laid off another individual on the job as well and his name is Freddy (Spanish). I know this 1<sup>st</sup> because I still had to conduct business through my job which called for me to go back from time to time, and so I saw him myself – face to face.

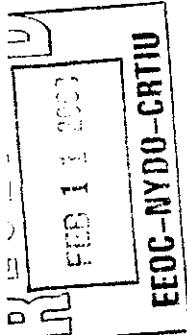
And I just want to make it perfectly clear that the reasons for my being terminated were as clear as day. I was told that it's because of a lack of work. Which I know is a lie because Freddy who was laid off for the same reason was rehired almost immediately. But to add insult to injury they also hired this person who is not even an American citizen (Jewish – from Israel). Now going back to my being told that things are slow. If work is so slow why then did they re-hire Freddy and this new person?

I even heard from Manual that before I was terminated that they wanted to train another cook to do my job.

Now showing that I wasn't the only person in this same position, there is a woman by the name of Marquette that was out for about 3 months because she had a kidney operation. I on the other hand was out because of two separate operations on my bladder due to my being treated for cancer. And just to demonstrate how conscientious I was over my job – after each of those operations, I was only out for a total of 14 days and the records will prove this. When I could've stayed out for at least two to three months myself.

I strongly believe what happened to me was because of my disability with the cancer, namely because of the chemo treatments which required that I take the day of treatment off as well as the day after. And so it was for that reason that they took my job away, because they got tired of covering for me, which was actually not the case at all considering.

I also believe that Eddy Cesneros who is a supervisor which had something to do with the decision because he would complain if he had to cover for me during the times I was out because of my operations. And so each time I returned back to work I discovered that he (Eddy Cesneros) was complaining to the Exec. Chef – Avner Niv, who was the only person trying to look out for me. Also Mae Georgio, who at one time was the production manager before she got promoted to quality control, started complaining about how



much she hated her new position. So in order to get her old position back she joined in with Eddy to make complaints about how bad I was doing as production manager so she could get the position back. So I strongly believe that her false comments helped in the decision to terminate me under false pretense, since the gentlemen from Israel is doing a job that they told me was no longer needed.

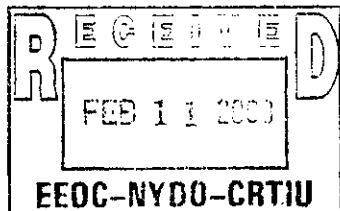
Now here is my strongest evidence in proving that I was lied to from the very beginning. On or around the 15<sup>th</sup> of January 2008 I received a call from Angie who works upstairs in the main offices. She said Kobi Lior who is the president of the company wanted to talk to me. My response of course was for what? She then said, "Just talk to him and hear what he has to say." So I said Okay, so she connects us and he asked, are you working? I said No; they then said, "Maybe I can give you a couple of days. So we made plans to meet to discuss my coming back to work.

But since I didn't trust them, I called up EEOC to let you know what happened to see if this was going to affect my case and was told no. Even if I decided to go back to work for them my case would still be open. So after hearing that 1<sup>st</sup> hand, I called them back and made an appointment to speak directly with the president of the company Kobi Lior of Borenstein Caterers. On January 21<sup>st</sup> at 11:00am we talked face to face and he asked me how I felt about coming back to work 3 days a week for approximately 3 months?

Now to be honest I was okay with the 3 days a week, but I had a problem with the three months, I wanted more. In fact they even suggested that they pay me off the books, but the CFO told Kobi, no if you're going to hire him – then hire him. Then the issues of insurance came up and that's when Kobi asked if I was getting coverage from the VA hospital, - in short I told him "No I wasn't." It was then that he said, "Because I don't want to pay the insurance." So that clearly told me that it's because of my overall condition with the cancer that they let me go in the 1<sup>st</sup> place.

And now they want to pay me off the books for 3 months, which means that I can't even collect unemployment benefits afterward, more importantly they don't have to pay out any unemployment insurance.

Now what they don't know is that I can prove that this is exactly how the conversation went down because I taped the entire conversation and it came out perfectly clear.



Continuation Notes:

Continuation of # 6.

From Israel to come over and that over quality control, but I was told work is slow. If work is slow why then did they re-hire Freddy and this new person? I was told that both my services and position were no longer needed anymore – they moved me out so they could put someone else in the position. They even wanted to train one of the cooks to do my job, and I learned this first hand from Manual and the actual cook they trained.

Continuation of # 7.

I was out of work because of two operations on my bladder because I was being treated for cancer. And just to demonstrate how conscientious I was over my job – after each of those operations, I was only out for a total of 14 days. When I could've stayed out for at least two to three months.

Continuation of # 9.

And that they always have to cover me, which was not the case. I also believe that Eddy Cesneros who is a supervisor which had something to do with the decision because he would complain if he had to cover for me during the times I was out because of my operations. And so each time I returned back to work I discovered that he (Eddy Cesneros) was complaining to the Exec. Chef – Avner Niv, who was the only person trying to look out for me. Also Mae Georgio, who at one time was the production manager before she got promoted to quality control, started complaining about how much she hated her new position. So in order to get her old position back she joined in with Eddy to make complaints about how bad I was doing as production manager so she could get her position back. I also believe her false comments helped in the decision.

Continuation of # 11.

He will tell what I said.....

*Marcel Zijl*

1-2-08